

Court of Appeals, State of Michigan

ORDER

John Piccirilli v Wendell Hughes

Docket No. 281794

LC No. 05-533897-CK

Karen M. Fort Hood
Presiding Judge

Helene N. White

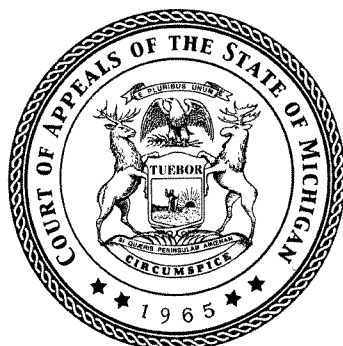
Christopher M. Murray
Judges

On the Court's own motion, this Court's April 25, 2008 order granting leave to appeal is VACATED.

In lieu of granting leave to appeal, the Court orders, pursuant to MCR 7.205(D)(2), that the trial court's October 12, 2007 order denying the motion of J.P. Morgan Chase Bank, N.A. ("Chase") to set aside the prior order holding Chase liable is VACATED. It is unclear under what authority the prior order holding Chase liable was entered. At the August 25, 2006 hearing, the trial court indicated that it was entering a default judgment. However, in denying Chase's motion to set aside the prior order, the trial court referred to judgment being entered on summary disposition. In light of the uncertainty regarding the authority under which the prior order was entered, the trial court could not properly resolve Chase's motion to set aside the prior order. Further, the trial court did not sufficiently address Chase's contention that its liability is limited to \$1,596.35 under MCR 3.101(G)(1).

This case is REMANDED to the trial court for further proceedings consistent with this order. The trial court shall clarify the authority under which the prior order holding Chase liable was entered, and then resolve anew Chase's motion to set aside the prior order. If the trial court determines that the prior order was a default judgment, the court should consider the propriety of the default judgment in light of MCR 3.101(S). If the trial court determines that the prior order was entered on summary disposition, the trial court shall consider whether the motion was procedurally proper under MCR 2.116(G), and substantively meritorious in light of MCR 3.101(M)(2). In addition, the trial court shall specifically address Chase's contention that MCR 3.101(G) (1) limits its liability.

We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 29 2008

Date

Sandra Schultz Mengel
Chief Clerk